

File reference LS7054

Ms Teresa van Lieshout  
Registered Officer

Dear Ms van Lieshout

**Notice of decision under subsection 141(7) of the *Commonwealth Electoral Act 1918* and Statement of Reasons**

1. I refer to the written application to the Electoral Commission (the Commission) for review of the decision of the Australian Electoral Commission (AEC) delegate to refuse the application to register the Voter Rights Party (the Party) as a non-Parliamentary party in the *Register of Political Parties*, received by the AEC on 25 January 2018.
2. This letter is to notify you, in accordance with subsection 141(7) of the *Commonwealth Electoral Act 1918* (the Electoral Act), that on 21 August 2018, the Commission reviewed the decision of the AEC delegate, and affirmed the decision under review.

**Application for review**

3. On 13 June 2018, a delegate of the Commission issued a notice in accordance with subsection 133(3) of the Electoral Act notifying you, as Registered Officer of the Party, of her decision to refuse the Party's application to register the Party in the *Register of Political Parties*.
4. On 27 June 2018, the AEC received by email from you, a written application for review by the Commission of the delegate's decision to refuse to register the Party. The following reasons were provided for making the application:
  - that there was a lack of evidence surrounding which of the 13 members of the Party had denied membership; and
  - that there were deficiencies in the statistical methodology used by the AEC on the basis that the method does not allow for an infinite number of members to be provided by the Party, and the method would allow for any number of members to say no.

5. On the same day, the AEC informed you by email that the application for review had been accepted as a valid application, and invited the Party to provide within 28 days any further material it wished to be considered in the review. The AEC did not receive any further material to be considered in the review within that timeframe.

### Section 127 of the Electoral Act

6. On Friday 15 June 2018, the Speaker of the House of Representatives issued writs for the election of Members of the House of Representatives for the Divisions of Braddon, Fremantle, Longman, Mayo and Perth. As a result of the issue of the writs, section 127 of the Electoral Act came into effect, suspending the application for the review of the decision by the Commission until after all five writs were returned. The last of these writs were returned on Monday 13 August 2018. Consequently consideration of this application for review recommenced on Tuesday 14 August 2018.

### Decision

7. The Commission has reviewed the delegate's decision of 13 June 2018 to refuse the application to register the Party in the *Register of Political Parties*, and has **affirmed** that decision under subsection 141(4) of the Electoral Act.

### Reasons for Decision

8. Based on the materials before the Commission, the Commission has determined that the Party's application for registration failed to meet the legislative requirement set out at paragraph 126(2)(ca) of having at least 500 members. The reasons for the Commission's decision are set out below.

### Material taken into account

9. In making this decision, the Commission had regard to:
  - the initial application to register the Party as a non-Parliamentary party received by the AEC on 25 January 2018;
  - the varied application of 17 May 2018, made under subsection 131(3) of the Electoral Act;
  - the results of the testing of the list of the names of the 500 members of the Party to be relied on for the purposes of registration, conducted by the AEC in accordance with the sampling methodology developed by the Australian Bureau of Statistics (ABS);
  - the delegate's decision of 13 June 2018 to refuse to register the Party in the *Register of Political Parties* under Part XI of the Electoral Act;
  - the notice of decision and statement of reasons dated 13 June 2018, given under subsection 133(3) of the Electoral Act;

- the reasons set out in the application to the Commission for review of the decision to refuse to register the Party in the *Register of Political Parties* under Part XI of the Electoral Act, received by the AEC on 27 June 2018;
- Part XI of the Electoral Act, in particular, sections 4, 123, 126, and 141;
- the Register of Political Parties of each Australian state and territory; and
- the AEC *Party Registration Guide*.

## Findings of Fact

10. On the material before the Commission, the Commission makes the following findings:

### Procedural application requirements

11. The initial application for registration of 25 January 2018:

- was in writing, signed by the applicants and the person who is to be the registered officer of the party;
- set out the name and address of the person who is to be the registered officer of the party for the purposes of the Electoral Act;
- advised whether the party wishes to receive moneys under Division 3 of Part XX of the Electoral Act;
- set out the names and address of the applicants and particulars of the capacity in which each applicant makes the application; and
- was accompanied by a fee of \$500.

12. Accordingly, the Commission is satisfied that the application for party registration meets the requirements of paragraphs 126(2)(c), 126(2)(d), 126(2)(e) and 126(2)(g) of the Electoral Act.

### Party name and abbreviation

13. The Party Name 'Voter Rights Party', and the abbreviation 'VRP':

- does not comprise more than 6 words;
- is not obscene;
- is not the name, or an abbreviation or acronym of the name of another political party (not being a political party that is related to the Party) that is a recognised political party;
- does not so nearly resemble the name, abbreviation or acronym of the name of another political party (not being a political party that is related to the Party) that is a recognised political party that is likely to be confused with or mistaken for that name or that abbreviation or acronym;
- is not one that a reasonable person would think suggests that a connection or relationship exists between the Party and a registered party;
- does not comprise the words "Independent Party";
- does not contain the word "Independent" and the:

- name, or abbreviation or acronym of the name of a recognised political party; or
  - matter that so nearly resembles the name or an abbreviation or acronym of a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.
14. Accordingly, the Commission is satisfied that the proposed name and abbreviation of the Party meet the requirements of section 129 of the Electoral Act.

#### Party constitution

15. The Commission is satisfied that the Party's constitution meets the requirements of having a written constitution set out in the definition of an *eligible political party* in subsection 123(1) of the Electoral Act and in accordance with the definition of *political party* at section 4 of the Electoral Act.

#### Membership list

16. On 17 May 2018, the Party submitted a list of the names of 550 members to be relied on for the purposes of registration.
17. AEC staff cross-checked this membership with the Commonwealth electoral Roll (the Roll), as required by subsection 123(3) of the Electoral Act. These searches identified that:
- 20 of the 550 submitted members could not be matched to the Roll; and
  - two listed members were identified as members of other registered political parties.
18. Accordingly, the AEC then proceeded to test a sample of the remaining 528 members.
19. In accordance with the methodology devised by the ABS, a list of 528 members requires a random sample of 41 contactable members to confirm they are members of the Party, with up to four denials of membership allowed, in order for the Commission to have statistical confidence that the Party has 500 members.
20. The AEC attempted to contact 61 persons on the list of members, as some of those listed were unable to be contacted, did not respond or provided a neutral response. Of the 41 responses received, 28 persons confirmed their membership, while 13 denied membership of the Party.
21. As the number of denials exceeded the four permitted for a sample of this size in accordance with the sampling methodology developed by the ABS, the Commission is **not satisfied** that the Party meets the minimum membership requirements of paragraph 126(2)(ca) of the Electoral Act.

#### Comments on the application for review

22. In respect of the assertion in the application for review that the membership sampling methodology used by the AEC is deficient, the Commission is satisfied that the methodology, developed by the ABS, was correctly applied in this case, that the

- methodology is consistent with the Electoral Act and that the methodology provides the AEC with a statistical degree of certainty about a party's number of members.
23. The sampling methodology forms part of a testing process used by the AEC, the aim of which is to give the AEC a statistical degree of certainty about a party's number of members. Depending on the sample size used, the sampling methodology allows for a certain number of nominated members to deny membership when contacted by the AEC before the Commission (or its delegate) determines that the party does not have the minimum 500 members.
24. The recommendations from the ABS regarding sample sizes, the relative number of allowable membership denials and the risk/certainty levels associated with these, are set out in a table to which the Commission or delegate refers on each occasion that membership testing has been conducted either for a new party application pursuant to section 126 of the Electoral Act or review of eligibility pursuant to section 138A of the Electoral Act.
25. In respect of the assertion in the application for review that the AEC provided no evidence to the Party regarding the 13 individuals who denied membership, the Commission is of the view that the *Privacy Act 1988* prohibits the AEC from providing you with the personal information of these persons. You were informed on 18 June 2018, by email that the AEC did not have the express or implied consent of these persons to disclose their personal information (including their names) to you or any other third parties, and that it was open to you to make contact with party members.

### Summary of Decision

26. The Commission has **affirmed** the decision of the delegate to refuse the application to register the Party in the *Register of Political Parties*, on the basis that the Party's application for registration failed to meet the legislative requirement of having at least 500 members.
27. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

<signed>

The Hon. Dennis Cowdroy OAM QC  
30 August 2018

<signed>

Mr David Kalisch  
30 August 2018

<signed>

Mr Tom Rogers  
30 August 2018

## Your review rights

Under subsection 141(5) of the Electoral Act, a person (including an organisation) affected by the decision who is dissatisfied with the decision may make an application to the Administrative Appeals Tribunal (the AAT) for review of this decision.

### How do I make an application to the AAT for a review of a decision?

In accordance with section 29 of the *Administrative Appeals Tribunal Act 1975*, the application must be made:

- in writing;
- be accompanied by any prescribed fee;
- contain a statement of reasons for making the application;
- a copy of this notice of decision and statement of reasons; and
- made within the prescribed time.

Your application should also:

- specify the name of the applicant; and
- include an address at which documents may be sent to.

More information on how to apply to the AAT can be found on their website:

[www.aat.gov.au/applying-for-a-review/how-to-apply](http://www.aat.gov.au/applying-for-a-review/how-to-apply).

### Prescribed fee

The standard application fee is \$920. You may be entitled to pay a reduced fee of \$100 in certain circumstances.

If you pay the standard application fee, and the case is resolved in your favour, the difference between the fee you paid and \$100 will be refunded. There is no refund if you paid the reduced fee of \$100.

Further information about fees is available on the AAT website:

<http://www.aat.gov.au/applying-for-a-review/fees>.

### Prescribed time for making an application

You may apply for review from the period commencing on the day on which the decision is made, being 21 August 2018 and ending on the twenty-eighth day after this letter was given to you.

The AAT may extend the time for making an application to the AAT for a review of a decision if, an application is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

### Conduct of a review by the AAT

The AAT can exercise the same powers and discretions as the Commission to make a decision on an application to register a party in the *Register of Political Parties* afresh and made a decisions to either:

- affirm the decision under review;
  - vary the decision under review; or
  - set aside the decision under review; and:
    - make a decision in substitution for the decision set aside; or
    - remit the matter for reconsideration in accordance with any directions or recommendations of the AAT.

Further information about the review process can be found on the AAT website:

<http://www.aat.gov.au/steps-in-a-review/overview-of-the-review-process>

### Freedom of Information

Under the *Freedom of Information Act 1982* (the FOI Act) any person has the right to request access to documents held by the AEC. For more information about access to documents under the FOI Act please visit the AEC's "Access to AEC information" webpage at: [www.aec.gov.au/information-access/index.htm](http://www.aec.gov.au/information-access/index.htm).

Should you have any further queries regarding this decision, please contact the Commission Secretariat by emailing [commission.secretariat@aec.gov.au](mailto:commission.secretariat@aec.gov.au).